

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID HOLLETT,

Case No.: 2:22-cv-01931-APG-NJK

Plaintiff

Order

V.

DIRECTOR OF NURSING, et al.,

Defendants

9 Plaintiff David Hollett brings this civil-rights action under 42 U.S.C. § 1983 to redress
10 constitutional violations that he claims he suffered while incarcerated at Ely State Prison. ECF
11 No. 1-1. On November 21, 2022, the magistrate judge denied Hollett’s application to proceed *in*
12 *forma pauperis* without prejudice because Hollett filed his application using the form for non-
13 inmates, rather than the form for inmates. ECF No. 3. The magistrate judge ordered Hollett to
14 file a fully complete application to proceed *in forma pauperis* using the correct form for inmates,
15 or pay the full \$402 filing fee, by January 20, 2023. *Id.* The magistrate judge warned Hollett that
16 the action could be dismissed if he failed to comply by that deadline. *Id.* at 2.

17 On November 29, 2022, Hollett filed a motion for clarification. ECF No. 4. The
18 magistrate judge denied the motion, explaining that the order was clear that Hollett had filed his
19 application using the incorrect form, and that he must file a new application with the correct
20 form. ECF No. 5. The January 20, 2022, deadline has passed, and Hollett did not comply with the
21 order or file a request for an extension.

22 | I. Discussion

23 District courts have the inherent power to control their dockets and “[i]n the exercise of
that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.

1 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
 2 dismiss an action based on a party's failure to obey a court order or comply with local rules. *See*
 3 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
 4 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
 5 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
 6 order). In determining whether to dismiss an action on one of these grounds, I must consider:
 7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
 8 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 9 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
 10 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
 11 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

12 The first two factors, the public's interest in expeditiously resolving this litigation and the
 13 court's interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
 14 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
 15 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
 16 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 17 factor, the public policy favoring disposition of cases on their merits, is greatly outweighed by
 18 the factors favoring dismissal.

19 The fifth factor requires me to consider whether less drastic alternatives can be used to
 20 correct the party's failure that brought about the court's need to consider dismissal. *See Yourish*
 21 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 22 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
 23 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that "the persuasive

1 force of" earlier Ninth Circuit cases that "implicitly accepted pursuit of less drastic alternatives
2 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the "initial
3 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]" have
4 been "eroded" by *Yourish*). Courts "need not exhaust every sanction short of dismissal before
5 finally dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*
6 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
7 until Hollett either files a fully complete application to proceed *in forma pauperis* or pays the
8 \$402 filing fee, the only alternative is to enter a second order setting another deadline. But the
9 reality of repeating an ignored order is that it often only delays the inevitable and squanders the
10 court's finite resources. The circumstances here do not indicate that this case will be an
11 exception: there is no hint that Hollett needs additional time. Setting another deadline is not a
12 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

13 **II. Conclusion**

14 The relevant factors weigh in favor of dismissal. I therefore order that this action is
15 dismissed without prejudice based on Hollett's failure to file a fully complete application to
16 proceed *in forma pauperis* using the correct form or pay the full \$402 filing fee in compliance
17 with the magistrate judge's order. The Clerk of Court is directed to enter judgment accordingly
18 and close this case. No other documents may be filed in this now-closed case. If Hollett wishes
19 to pursue his claims, he must file a complaint in a new case.

20 Dated: February 6, 2023

21 
22 U.S. District Judge
23